

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

DEMEKO WHATLEY,)
)
Plaintiff,)
)
vs.) Case No. 4:08CV01108 ERW
)
UPS,)
)
Defendant.)

MEMORANDUM AND ORDER

This matter comes before the Court on Plaintiff's Motion to Compel [doc. #15]. A hearing was held on April 7, 2009, and the Court heard arguments from the Parties on this Motion. In this action, Plaintiff alleges employment discrimination and retaliation because he participated as a character witness in a harassment case.

One of Plaintiff's co-workers was the defendant in a sexual harassment lawsuit. Plaintiff testified a character reference for this individual, despite having been told by Defendant to not get involved in the suit. As a result, Defendant terminated Plaintiff's employment. Plaintiff subsequently filed a charge of discrimination, and Defendant reinstated Plaintiff. When Defendant reinstated Plaintiff, he was assigned to a different shift in a different area. After injuring himself, Plaintiff filed second charge of discrimination with the Missouri Commission on Human Rights on February 2, 2007. This charge stated that "I believe that I have been discriminated against by being assigned a different position, being subjected to different terms and conditions of employment, and being denied back pay on the basis of retaliation for protected activity." The pending lawsuit resulted from the filing of this EEOC charge.

Plaintiff filed a third charge of discrimination with the Missouri Commission on Human Rights on December 3, 2007. This charge claims discrimination between February 9, 2007 and October 31, 2007. He states that since filing the charge in February 2007, he has been retaliated against, threatened with termination, denied the use of personal days, monitored by audio and videotape, “and threatened with a lawsuit when I requested to see a physician after being injured on the job.”

In his pending Motion, Plaintiff seeks materials related to the third charge. Defendant states that the information Plaintiff seeks is irrelevant to this lawsuit, and asks that the Court deny this Motion. Plaintiff responds that this charge is intricately related to the pending suit.

The Court has reviewed Plaintiff’s Complaint, and it is clear that the matters in Plaintiff’s second and third charges were intertwined in this action. In his complaint, Plaintiff states that he has “been threatened with a lawsuit.” Additionally, he has “been written up multiple times. I’ve been denied medical attention, I’ve been placed under surveillance both audio and visual, I was also told that I could only have my back pay if I dropped my EEOC charge.” The Complaint encompasses the issues raised in both Plaintiff’s second and third charges. This was even recognized by the Missouri Commission on Human Rights when they closed the file on Plaintiff’s third charge because Plaintiff “has filed in district court.”

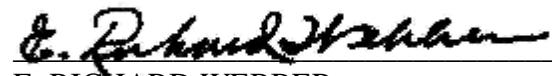
The facts of these two charges are intertwined, and judicial economy is best served by considering these claims together. While it appears that Plaintiff has included many of the allegations from both charges in this suit, the Court will permit Plaintiff twenty (20) days to amend his Complaint to add any allegations or assertions related to either charge. After the Court receives Plaintiff’s amended complaint, the Court will issue an amended, abbreviated, case management order, resetting the deadlines in this action.

Accordingly,

IT IS HEREBY ORDERED that Plaintiff's Motion to Compel [doc. #15] is **DENIED**,
as moot.

IT IS FURTHER ORDERED that Plaintiff shall submit an amended complaint within twenty (20) days of this Memorandum and Order.

Dated this 7th Day of April, 2009.


E. RICHARD WEBBER
UNITED STATES DISTRICT JUDGE